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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,096	03/02/2004	Joseph Johan Maria Van Rens	2007-1003-1	1188

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EXAMINER

DESAI, HEMANT

ART UNIT PAPER NUMBER

3721

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/790,096

Applicant(s)

VAN RENS ET AL.

Examiner

Hemant M Desai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 March 2004.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-26 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☒ Certified copies of the priority documents have been received in Application No. 09/985,037.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/6/04  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-10, 16 and 18-20, 23-25 of U.S. Patent No. 6711875. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of Patent ("875) does not disclose the control means having edge noticing means for noticing the position of a longitudinal

edge of the web with respect to a fixed reference in the machine and means for controlling the drive means for the zipper strip conveyor in response to the data from the noticing means. However, claim 24 of Patent ('875) discloses both the control means having edge noticing means for noticing the position of a longitudinal edge of the web with respect to a fixed reference in the machine and means for controlling the drive means for the zipper strip conveyor in response to the data from the noticing means. Also claim 1 of Patent ('875) discloses the subject matter of the claim 2 of the Application. Application-claims 3-11 are identical to Patent-claims 2-10 ('875).

Regarding claims 12 and 17 of Application, the claim 1 of Patent ('875) does not disclose the mean for positioning and means for controlling the means for positioning the zipper strip applicator device in the direction transverse to the web. However, claim 25 of Patent ('875) discloses the mean for positioning and means for controlling the means for positioning the zipper strip applicator device in the direction transverse to the web.

Regarding claims 13-16 and 22 of the application, claims 18 and 25 of the Patent ('875) discloses the machine frame and an auxiliary frame on which the zipper strip applicator device is being supported and the auxiliary frame with respect to the machine frame being movable between a retracted operative position and an extended adjustment position and the means for positioning the zipper strip applicator device. Patent ('875) claim 25 discloses the means for positioning the zipper strip applicator device and therefore it is inherent to provide motor. Since function of motor is to drive (or to move), it would have been an obvious matter of design choice to provide spindle

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motor, since applicant has not disclose that the spindle motor solves any stated problem or it is for any particular purpose and it appears that the invention would perform equally well with any other kind of motor.

Regarding claims 18-20 of the application, claim 24 of the Patent ('875) discloses that the control means are adapted to control the drive of the second conveyor in the movement of the zipper to be applied, in response to the data from the edge noticing means.

Claims 23-24 of the Applications are identical to the Patent claims 19-20.

Claims 25-26 of the Applications are identical to the Patent claims 24 and 23 respectively.

### ***Conclusion***

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M Desai whose telephone number is (703) 308-5830. The examiner can normally be reached on 7:00 AM-5: 30 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hemant M Desai  
Examiner  
Art Unit 3721

HMD

A handwritten signature in black ink, appearing to read 'Rinaldi I. Rada', with a long horizontal flourish extending to the right.

Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700